IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.483 OF 1993

The State of Maharashtra ...Appellant.

V/s

Azadsubgg Vihariram Choudhari
age 29, R/o. Vihari, Khopoli,
Dist. Raigad. ...Respondent.

Mr. D.P. Adsule, APP for the State.'

None for the respondent.

CORAM: V.M.KANADE,J.

DATE: 3rd February, 2005

ORAL JUDGMENT:

1. The State has preferred this appeal being aggrieved by the Judgment and Order passed by the Judicial Magistrate, First Class in Regular Criminal Case No.168 of 1987. By the said judgment and order, the Trial Court acquitted the accused of the offence punishable under sections 3, 5, 25(1) and 27 of Indian Arms Act.

2. Prosecution case in brief is that P.S.I. Ghughe received an information that the accused was illegally in possession of country made revolver. Accordingly, raiding party went to the house of the accused and they found one country made reolver under the matress in the house of the accused. The said revolver was

seized. The charge-sheet was filed against the accused. The charge was framed. The accused pleaded not guilty to the said charge.

3. The prosecution examined P.W.1 - S.G. Mhatre who was the Police Constable attached to Khopoli Police Station. He has stated that he had gone to the house of the accused alongwith P.S.I. Ghughe, Police Constable Pisat, Police Constable Dange and two panch wintesses and they recovered a country made revolver. The panchanama was prepared. In the cross-examination, he has stated that he has no knowledge whether the search warrant was obtained before taking search of the house of the accused. The prosecution, thereafter, examined P.W.2 - Vasant Pandurang More who has stated that he had gone along with the raiding party to the house of the accused and the revolver was recovered from his house. The prosecution further examined P.W. 3 - P.S.I. Pandharinath N. Ghughe. He has also stated that he went alongwith the raiding party and recovered the revolver which was beneath the matress in the house of the accused. In the cross-examination, this witness has admitted that no documentary evidence was produced to show that the house which was searched was in the occupation of the accused. The accused examined one

witness i.e. D.W. 1 - Pandurang Mahadeo Ingavale who was working as a Security Supervisor in Zenith Company. He has stated that, on the date of the incident, P.S.I. Ghughe had come alongwith the police staff and the accused had shown his locker and one revolver and four alive catridges were found in a shoe box wrapped in a cloth. From this evidence, it can be seen that P.S.I. Ghughe had not obtained a search warrant before entering the house of the accused. He had ample opportunity and time to obtain the search warrant. However, without obtaining the warrant, he took search of the house of the accused. This is a very serious lacuna in the prosecution case. Further, it can be seen that no documentary evidence has been brought on record to show that the house which was searched was occupied by the accused. It was the duty of the prosecution to establish by examining either the landlord or bringing other documentary evidence on record to show that the accused was residing in the said house. Further, from the evidence of the defence witness, it can be seen that the revolver, apparently, was recovered from the locker of the accused in the factory and, thereafter, the recovery has been shown to have been made from the house of the accused. There is thus obnvious discrepancy regarding the place from where the revolver is seized. In view of these

discrepancies and lacunas in the prosecution case, the accused is entitled to be given a benefit of doubt. The Trial Court has, therefore, rightly acquitted the accused of the offence with which he was charged.

Appeal, therefore, is dismissed.

V.M. KANADE, J.